



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 27 2004

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

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**AIR ENFORCEMENT BRANCH,
U.S. EPA, REGION 5**

The Honorable Thomas L. Sansonetti
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

Attn: Max Maynard, Case Manager
Environmental Enforcement Section
Room 13052

RE: Request, pursuant to Section 113(d)(1) of the Clean Air Act, for Waiver of 12-Month Limitation on EPA Authority to Initiate Administrative Case (Region 5, Morgan Electro Ceramics, Inc., Bedford, OH)

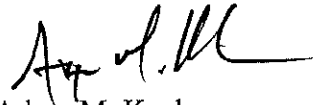
Dear Mr. Sansonetti:

By this letter, the Air Enforcement Division of the United States Environmental Protection Agency's (EPA) Office of Enforcement and Compliance Assurance concurs and joins with EPA Region 5 in its request that a waiver of the 12-month limitation on EPA's authority to initiate an administrative penalty action be granted in the above-referenced matter. Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), limits EPA's authority to issue administrative penalty complaints to matters where the total penalty sought does not exceed \$270,000 and the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action. However, these limitations may be waived "where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty action." Section 113(d)(1) of the Clean Air Act, 42 U.S.C. § 7413(d)(1).

For the reasons set forth in the enclosed enforcement sensitive memorandum, EPA believes that an administrative penalty order would be an appropriate enforcement response in this case. We would very much appreciate your expeditious handling of this matter.

If you have any questions or need further information regarding this matter, please do not hesitate to contact me at 202-564-7979.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam M. Kushner".

Adam M. Kushner
Acting Director
Air Enforcement Division

Enclosure

cc: Stephen Rothblatt, Director, ARD, Region 5
George Czerniak, ARD, Region 5
Susan Tennenbaum, ORC, Region 5
Jeff Bratko, ARD, Region 5
William Brighton, US DOJ

(AE-17J)

**FOIA EXEMPT
ENFORCEMENT CONFIDENTIAL**

MEMORANDUM

DATE:

SUBJECT: Request for Concurrence on and Joint Determination of Waiver of Clean Air Act Section 113(d) (1) 12-Month Penalty Limitation on APO against Morgan Electro Ceramics, Inc., Bedford, Ohio

FROM: Stephen Rothblatt, Director
Air and Radiation Division

TO: Adam Kushner, Acting Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance (2242)

Ben Fisherow, Deputy Chief
Environmental Enforcement Section
U.S. Department of Justice

Region 5 of the United States Environmental Protection Agency (U.S. EPA) wishes to initiate administrative penalty proceedings against Morgan Electro Ceramics, Inc., located in Bedford, Ohio, under the authority of Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d). Morgan Electro Ceramics, Inc., has violated NESHAP standards and Title V permitting requirements. Region 5 proposes to issue an Administrative Penalty Order (APO) to Morgan Electro Ceramics, Inc., relating to these violations.

Although the first alleged date of violation at issue in this case will have occurred more than 12 months prior to the issuance of the proposed APO, under Section 113(d) of the Act Region 5 has determined that the case is appropriate for administrative penalty action. As the signature below indicates, the Regional Counsel for Region 5 has reviewed and concurred in this determination. For this reason, Region 5 hereby requests that the Assistant Administrator for OECA concur in Region 5's determination that this case is appropriate for administrative penalty action. Region 5 also requests that the Attorney General determine, jointly with Region 5, that it is appropriate to initiate administrative penalty proceedings in this case even though the first alleged date of violation will have occurred more than 12 months prior to initiation of the administrative action.

For information on the specifics of the case and the rationales supporting the

Briefing Document Supporting Request for Waiver of Clean Air Act Section
113(d) (1)

12-Month Limitation for Morgan Electro Ceramics

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Waiver Requirement

The Administrator of U.S. EPA may issue an Administrative Penalty Order (APO) assessing a civil penalty of up to \$27,500 per day for each violation, with a maximum of \$220,000, for NESHAP and Title V permit violations that occurred between January 31, 1997 and March 15, 2004, and may issue an APO assessing a civil penalty of up to \$32,500 per day for each violation, with a maximum of \$270,000, for violations that occurred on and after March 15, 2004 under Section 113(d) of the Act, 42 U.S.C. § 7413(d) and 40 C.F.R. Part 19, as amended at 69 Fed. Reg. 7121 (February 13, 2004). U.S. EPA may issue these orders in cases where the first alleged date of violation occurred no more than 12 months prior to initiating the administrative action, and in other cases where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or a longer period of violation is appropriate for administrative penalty action.

For the reasons set forth below, Region 5 believes that an APO is the most appropriate enforcement response for the violations at issue in this case.

Background

On November 17, 2003, Region 5 issued a Finding and Notice of Violation (FOV/NOV) to Morgan Electro Ceramics for violations of the National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 C.F.R. Subparts A and T, and for violations of the Ohio State Implementation Plan (SIP). The NESHAP violations cited included violations of emission standards and violations of record keeping requirements. The air pollutant emitted in violation of the emissions limits is tetrachloroethylene (perchloroethylene). The SIP violations cited noted that the company had failed to maintain operating permits required by the SIP. On July 2, 2004, Region 5 issued a FOV to the company for violations of Title V of the Clean Air Act. The FOV cited the company's failure to apply for Title V permits on three occasions between 1996 and 1999. The violations for which Region 5 seeks penalties will go back five years from the date it issues the APO.

Justification for Waiver

The Region believes that an administrative penalty order, rather than a judicial action, is the preferable enforcement vehicle for addressing the violations committed by Morgan Electro Ceramics, Inc. This determination is based on a consideration of the following factors.

1. Small Penalty Proposed and No Injunctive Relief Sought

No injunctive relief is needed in this case. The company has submitted an

application for a Title V permit. The company has replaced one of the degreasers that had been violating emissions standards. The company has also implemented changes in its record keeping practices that will prevent the record-keeping violations and will reduce the violations of emissions standards that were due, in part, to faulty record keeping. The litigation team will not seek an economic benefit in this case, because it is minimal.

2. Compliance Achieved

The company has submitted an application for a Title 5 permit. The company has also replaced one of the degreasers that was the source of the violations of the NESHAP emission standard.

3. Cooperation

The company has been cooperative in correcting the violations.

4. Litigation Risk

The company did seek permitting information from the local air pollution agency and it relied on that information. The information the company received was not complete and contributed to the company's belief that it did not need a Title V permit. As a consequence, the company withdrew its permit application. In addition, unlike most NESHAP standards, sources subject to the National Emission Standard for Hazardous Air Pollutants for Halogenated Solvent Cleaning calculate their potential emissions using a standard emission factor that does not take into account the design of the source. Most other NESHAP standards require that their potential to emit be determined in a different manner that tends to result in lower potential emissions because the actual design of the facility is taken into account when calculating emissions.

The company also chose to comply with an alternative standard that is available in the regulation as a compliance option. By choosing that alternative, the company is not allowed any malfunctions. Had the company not chosen the alternative compliance option, it is likely many of its violations would not be considered violations, because they qualify as malfunctions that would be excused if the company was following plans for dealing with such malfunctions.

These facts create a risk for both the liability and penalty portions of any judicial proceedings.

Conclusion

Region 5 believes that a civil penalty is warranted in this action. However, for the reasons set forth above, Region 5 believes that this case would most appropriately be resolved by an administrative action rather than a judicial action. Consequently, because the earliest violation began more than 12 months ago, Region 5 is seeking agreement from the Attorney General that it is

waiver, please see the attached briefing document. Copies of the Notice of Violation and Finding of Violation and penalty calculation for the case are also attached.

Please send a copy of your response to this request to Susan Tennenbaum, U.S. EPA, Region 5, Office of Regional Counsel, 77 W. Jackson Blvd. (C-14J), Chicago, IL 60604. Should you require any further information concerning this matter, please do not hesitate to contact Jeffrey Bratko, Environmental Scientist, at (312) 886-6816 or Susan Tennenbaum, Associate Regional Counsel, at (312) 886-0273.

Thank you for your prompt attention to this matter.

Attachments

cc: Eric Cohen, Branch Chief
Office of Regional Counsel

Charlie Garlow, OECA

William Brighton, DOJ

I have reviewed and concur in the above waiver determination.

Bertram C. Frey
Acting Regional Counsel


appropriate to waive the 12-month limitation specified in Section 113(d) of the Act in order to file the case administratively. Region 5 is also seeking concurrence on this determination from OECA. Allowing a period of violation beyond 12 months to be subject to the proposed APO in this case would provide an enforcement response that can yield an appropriate penalty for Morgan Electro Ceramic's violations, while at the same time conserving the resources of the Department of Justice and the federal court system.

Susan Tennenbaum
08/20/2004 10:18 AM

To: Charlie Garlow/DC/USEPA/US@EPA
cc:
Subject: Fw: Morgan Electro Penalty

----- Forwarded by Susan Tennenbaum/R5/USEPA/US on 08/20/2004 09:17 AM -----

Jeffrey Bratko/R5/USEPA/US
08/16/2004 11:12 AM

To: William Macdowell/R5/USEPA/US@EPA
cc: Susan Tennenbaum/R5/USEPA/US@EPA
Subject: Re: Draft Opening Statement 

The current bottom line penalty figure is \$164,730. That number reflects substantial adjustments based on litigation risk and cooperativeness. They might be able to provide us with additional information that would allow a further reduction but I will have to review the file and penalty calculation to identify those areas where additional information might result in a reduced penalty figure.